

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION AT CINCINNATI**

**MARVALLOUS KEENE,**

\*

Petitioner,

\*

**Case No. 1:00-cv-421**

v.

\*

**Chief Judge Sandra Beckwith**

**BETTY MITCHELL, WARDEN,**

\*

*Death Penalty Case*

Respondent.

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**WARDEN'S MOTION TO EXPAND THE RECORD  
AND SUPPLEMENT THE RECORD ON APPEAL**

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The Warden moves the Court, pursuant to Habeas Rule 7 and Appellate Rule 10(e)(2)(B), to expand the record with the taped confessions of Marvallous Keene. These video taped confessions clearly establish overwhelming evidence of guilt against Keene, and rebuke any attempts by Keene to argue that Kathie Henderson's in-court identification of Keene was not harmless under *Brecht*. Grounds for this motion are set forth below.

Respectfully submitted,  
**MARC DANN**  
**Ohio Attorney General**

*s/ Thomas E. Madden*

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**THOMAS E. MADDEN (0077069)**

**Assistant Attorney General**

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**COUNSEL FOR RESPONDENT**

**MEMORANDUM IN SUPPORT**

The Warden respectfully requests that the record be expanded with the two video taped confessions (1 CD disc. – Ex. A) of Marvallous Keene given December 26 and 27, 1992. During the December 26 interview with police, Keene confessed to murdering Joe Wilkerson, Donita Gullette, and Sarah Abraham. On December 27, Keene was brought back to the police interrogation room and questioned about the murders of Marvin Washington and Wendy Cottrell. During that interview, Keene confessed to a plot to kill both witnesses. Keene also admitted to shooting Wendy Cottrell. The confessions were played to the jury during Det. Wade Lawson's testimony. (Tr. Vol. 13, pg. 1202, 1214)(State's Ex. 162).

Attachment A is a copy of the DVD-R video disc that the Warden seeks to include with the record on appeal. Simultaneous to this filing, four identical DVD-R video discs are being sent by overnight mail for manual filing to the South District Court Clerk.

WHEREFORE, the Warden respectfully requests that the Court expand the record with the video taped confessions by Keene as tendered, and that Keene's video confessions (Exhibit A – DVD-R video discs) then be transmitted to the 6<sup>th</sup> Circuit Court of Appeals for inclusion with the record on appeal.

Respectfully submitted,

**MARC DANN**  
**Ohio Attorney General**

*s/ Thomas E. Madden*

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**THOMAS E. MADDEN (0077069)**

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**COUNSEL FOR RESPONDENT**

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing, Warden's Motion To Expand the Record and Supplement The Record on Appeal, was sent via the court's electronic filing system to Counsel for Petitioner on this the 6th day of September, 2007.

*s/ Thomas E. Madden*

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**T.E. Madden\* (0077069)**

**Assistant Attorney General**